

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY g — D.C.
05 OCT 11 AM 10:00

WALTER MCGHEE, II,

Plaintiff,

vs.

ANDREW PALMER,

Defendant.

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No. 05-2525-D/V

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TENNESSEE

ORDER GRANTING EXTENSION TO PAY APPELLATE FILING FEE
ORDER DENYING MOTION TO PROCEED IN FORMA PAUPERIS ON APPEAL
AND
ORDER REAFFIRMING CERTIFICATION APPEAL IS NOT TAKEN IN GOOD FAITH

On August 11, 2005, the Court dismissed the complaint filed by plaintiff Walter McGhee, II, and entered its judgment on August 25, 2005. On September 7, 2005, McGhee filed a notice of appeal and also a motion to extend the time to file a notice of appeal. Because plaintiff has filed his notice of appeal, the motion to extend the time (docket entry 5) is actually a request for an extension of time to pay the appellate filing fee. On October 3, 2005, McGhee filed a motion to proceed in forma pauperis on appeal.

The Court's order of dismissal certified that any appeal in this matter by plaintiff is not taken in good faith and plaintiff may not proceed on appeal in forma pauperis. Plaintiff was notified that upon the filing of a notice of appeal, he must pay the entire \$255 filing fee required by 28 U.S.C. §§ 1913 and 1917¹

¹ The fee for docketing an appeal is \$250. See Judicial Conference Schedule of Fees, ¶ 1, Note following 28 U.S.C. § 1913. Under 28 U.S.C. § 1917, a district court also charges a \$5 fee:

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and that the entire filing fee must be paid within thirty days of the assessment order.

The United States Court of Appeals for the Sixth Circuit has held the thirty day deadline may be extended one time by thirty days if the motion to extend is filed within the meaning of Houston v. Lack, 487 U.S. 266 (1988), and Fed. R. App. P. 4(c) before the expiration of the original deadline. McGore v. Wrigglesworth, 114 F.3d 601, 610 (6th Cir. 1997).

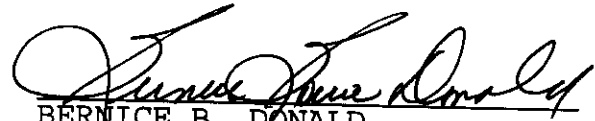
Accordingly, plaintiff is hereby granted a thirty day extension of time. Plaintiff shall pay the filing fee within thirty days from the date of entry of this order upon the docket. By filing a notice of appeal the plaintiff is now liable for the full amount of the filing fee, regardless of the subsequent progress of the appeal. If the plaintiff fails to pay the filing fee within thirty days of the entry of this order, the district court will notify the Sixth Circuit, who will dismiss the appeal. If the appeal is dismissed, it will not be reinstated once the fee is paid. McGore, 114 F.3d at 610.

To the extent plaintiff is now seeking leave to appeal this decision in forma pauperis, the Court repeats and reaffirms its earlier certification, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal in this matter by plaintiff is not taken in good faith and plaintiff may not proceed on appeal in forma pauperis.

Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or of a writ of certiorari \$5 shall be paid to the Clerk of the district court, by the appellant or petitioner.

Accordingly, the motion to proceed on appeal in forma pauperis is DENIED.

IT IS SO ORDERED this 9th day of October, 2005.


BERNICE B. DONALD
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 9 in case 2:05-CV-02525 was distributed by fax, mail, or direct printing on October 12, 2005 to the parties listed.

Walter McGhee
2810 Montague Avenue
Memphis, TN 38114

Honorable Bernice Donald
US DISTRICT COURT